

TAYLOR ENERGY CO. ET AL.

IBLA 97-583

Decided March 25, 1998

Appeal from a Minerals Management Service determination that oil and gas leases were not connected so as to require establishment of a unit agreement. MMS-97-0008-OCS.

Inspection and copying of confidential data allowed; briefing scheduled.

1. Administrative Procedure: Generally--Confidential
Information--Rules of Practice: Generally

Confidential data voluntarily furnished to MMS by oil and gas lessees to facilitate action affecting their leases became subject to disclosure to competing lessees under 30 C.F.R § 250.18(a) and 43 C.F.R. § 4.31(c).

APPEARANCES: Richard G. Morgan, Esq., and William F. Demarest, Esq., Washington, D.C., for Appellants Taylor Energy Company and Phillips Petroleum Company; J. Berry St. John, Jr., Esq., and Craig Wyman, Esq., New Orleans, Louisiana, for Intervenor F-W Oil Interests, Inc.; Peter J. Schaumberg, Esq., and Frank A. Conforti, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Taylor Energy Company (Taylor) and Phillips Petroleum Company (Phillips) have appealed from a July 30, 1997, Decision of an Acting Associate Director, Minerals Management Service (MMS), affirming a finding by an MMS Regional Supervisor that Matagorda Island Blocks 664 and 665, leased by Appellants, were not competitive with Block 631 leased by Exxon Company U.S.A. (Exxon) and Intervenor F-W Oil Interests, Inc. (F-W), so as to require establishment of a unit agreement. The word "competitive," as used by MMS, indicates the lease blocks do not share a common reservoir of the mineral resource targeted by the parties' operations. To facilitate the determination of this issue by MMS, the lessees submitted proprietary data to MMS which they did not disclose to one another. Appellants now seek access to the documents submitted to MMS by F-W and Exxon. F-W sought and was allowed to intervene in this appeal. Exxon has not appeared. The data submitted is in the case file before the Board, in packages marked "Taylor Proprietary" and "MMS/Exxon/FW Proprietary."

On December 10, 1997, a briefing schedule was established to allow the parties to this appeal to explain their positions concerning whether proprietary data presently on file with the Board might be inspected and copied by Appellants Taylor and Phillips pursuant to 43 C.F.R. § 4.31(c)(1) and (2); the scheduled briefing was extended to permit F-W to respond to a reply filed by Appellants. The scheduled briefing has been completed. Appellants contend that access to the F-W and Exxon data is required because the information to which they have access does not support the position taken by the MMS Decision, and they cannot adequately evaluate the MMS Decision without access to the entire body of data available to the decisionmaker. The immediate question presented before this appeal can proceed, therefore, is whether proprietary data submitted by Exxon and F-W Oil, Inc., is releasable to Appellants under 43 C.F.R. § 4.31(c)(1) and (2) over F-W's objection. It is concluded that the data should be released, unless F-W wishes to exercise its option under 43 C.F.R. § 4.31(d)(3) to withdraw the data at issue, thereby requiring remand to MMS to reconsider the evidence concerning the competitiveness of Taylor's Blocks 664 and 665 with Block 631 leased by F-W.

Provisions of 43 C.F.R. § 4.31(c)(1) and (2) address the rights of parties who have voluntarily furnished this type of information to the Department for use in decisionmaking. The regulation provides that affected parties may have access to otherwise privileged information used by the Department provided that they agree, in writing, not to use or disclose the data except as it relates to the Departmental action affecting them, and provided also they promise to return the data when its use is no longer needed for the prosecution of their interests in the affected proceeding before the Department. Appellants have agreed to be bound by the cited rule.

Further, paragraph (d) of the rule provides that any party claiming that the proprietary information is precluded by law from release must have indicated in its original submission that it was proprietary and must request that the presiding officer or appeals board review such evidence as a basis for its decision without disclosing it to the other party or parties. The proprietary information submitted by F-W is so identified, and F-W asserts that its release is prohibited and requests that it not be released. The authority upon which F-W relies for this position is 43 U.S.C. § 1344(g) (1994), which allows the Department to obtain proprietary data on condition that it be kept confidential. The cited statute does not, however, cover information provided voluntarily by an applicant pursuing private rights in an oil and gas lease. Rather, section 1344(g) deals with information acquired by the Department for its own purposes, providing that "[t]he Secretary may obtain from public sources, or purchase from private sources, any survey, data, report, or other information * * * which may be necessary to assist him in preparing any environmental impact statement and in making other evaluations required by this subchapter." The legislative history of section 1344(g), added in the 1978 Amendments to the 1953 Outer Continental Shelf Lands Act, Pub. L. No. 95-372 (Sept. 18, 1978), as section 18(g), explains this point:

Subsection 18(g) authorizes the Secretary to obtain from public sources or purchase from private sources any surveys,

data, reports or other information (including interpretations) which may be necessary to assist him in preparing any environmental impact statement, either for the entire leasing program if necessary, or for any particular lease sale, and in making other evaluations required by this Act. Confidentiality of all data is to be maintained as in accordance with this Act, appropriate regulations, or agreement between the parties. This confidentiality requirement is designed to allow the Secretary to negotiate for the purchase of data on the basis that it will be kept confidential as long as the seller wishes. Requiring the public release of all purchased data at any particular time would tend to lead data owners to refuse to sell the data to the Secretary.

1978 U.S.C.C.A.N. 1558.

Under 30 C.F.R. § 250.18(a)(1), geologic and geophysical data provided voluntarily by applicants for use in Departmental decisionmaking may not be released to the public for a specified time, except when: "The data and information are needed to unitize operations on 2 or more leases, to ensure proper plans of development for competitive reservoirs, or to promote operational safety or protection of the environment, and the data and information are shown only to persons with an interest in the issue."

That is the situation in this case. The information provided by F-W and Exxon was made available to MMS to facilitate the unitization determination made on July 30, 1997, and now Appellants, "persons with an interest in the issue," seek to review that information. We find that the Department is required to divulge to Appellants the information on which the July Decision was based under provisions of 30 C.F.R. § 250.18(a)(1) and in conformity to 43 C.F.R. § 4.31(c).

The question of when proprietary data must be released by the Department has been on the periphery of a number of Departmental decisions, which have acknowledged that the policy of the Department favors release of information voluntarily supplied for use in Departmental decisionmaking. In Southern Union Exploration Co., 51 IBLA 89, 92 (1980), the Board rejected the notion that data produced by the Department itself was proprietary and required release of a staff memorandum produced by the Geological Survey. And in Yates Petroleum Corp., 131 IBLA 230, 239 (1994), after ordering a hearing on disputed issues of fact arising from contested rights of lessees in a potash area, we observed parenthetically that Departmental rule 43 C.F.R. § 4.31 distinguishes between disclosure of information to the general public and release of information to parties engaged in a proceeding before the Department, while the burden to show that disclosure should be denied rests with the party opposing the release of data.

Nonetheless, the instant case squarely presents to this Board, for the first time, a case when the rule has direct application. We find that the disclosure requested here is allowed under 30 C.F.R. § 250.18(a)(1), and that the process under which the release of information may be obtained is

provided by 43 C.F.R. § 4.31(c)(1) and (2). This is so, because the data sought to be released was voluntarily provided by F-W for use by MMS to facilitate the Decision here under appeal and appears to be material to the resolution of the dispute presently before us on appeal. The provisions in 43 C.F.R. § 4.31(c)(1) and (2) are designed to balance the rights of the parties by requiring a sworn affidavit from the demanding party to assure protection of proprietary information, while affording the opposing party the opportunity to effectively respond to an adverse decision such as confronts Appellants here. As a practical matter, unless a disclosure is made of all the information considered by MMS in making the Decision here under review, a resolution of this appeal appears unlikely.

We therefore find that Appellants have complied with provisions of 43 C.F.R. § 4.31(c)(1) and (2) so as to protect the confidentiality of data provided by F-W and Exxon to MMS that is relevant to the July 30, 1997, Decision here on appeal. We also find that neither 43 U.S.C. § 1344(g) (1994), nor Departmental regulations prohibiting disclosure of confidential data to the public at large apply here, where conflicting interests in oil and gas leases affected by MMS decisionmaking require that the parties be allowed equal access to data voluntarily furnished by the parties to be used by MMS when taking action affecting their interests.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, subject to limitations below imposed, the entire case record presently filed with the Board may be inspected and copied by the parties, subject to the limitations imposed by 43 C.F.R. § 4.31(c), and provided that the inspecting party complies with the protective measures therein stated. A copy of the decision is being sent to each party who has submitted data deemed to be confidential. Each of those parties shall have 10 days following receipt to withdraw that data, pursuant to 43 C.F.R. § 4.31(d)(3), prior to inspection. Following inspection and copying, Appellants may file a supplemental statement of reasons (SSOR) not later than April 30, 1998, unless otherwise ordered. Thereafter, MMS and F-W shall reply within 30 days following receipt of the SSOR, whereupon, unless otherwise ordered, this case shall be ripe for decision.

Franklin D. Arness
Administrative Judge

We concur:

James P. Terry
Administrative Judge

R.W. Mullen
Administrative Judge